

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/24/2012

Action Requested By:
Recreation Services

Agenda Item Type
Resolution

Subject Matter:

Facility Use Agreement with the Huntsville Swim Association

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Facility Use Agreement between The City of Huntsville and the Huntsville Swim Association.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

To provide aquatic facilities for the Huntsville Swim Association competitive swim team practices.

Associated Cost: 0

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Dreg Patterson

Date: 5/2/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Recreation Services**

Council Meeting Date: **5/24/2012**

Department Contact: **April/Sonya**

Phone # **256-564-8026**

Contract or Agreement: **Facility Use Agreement between The City of Huntsville and the Huntsville Swi...**

Document Name: **Facility Use Agreement between The City of Huntsville and the Huntsville Swim Assoc...**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select...	Select...
------------------	------------------

Grant-Funded Agreements

Select...	Grant Name:
	<input style="width: 95%;" type="text"/>

Department	Signature	Date
1) Originating	<i>Greg Patterson</i>	<i>5-7-12</i>
2) Legal	<i>Mary C. Cotto</i>	<i>5-7-12</i>
3) Finance <i>AC</i>	<i>[Signature]</i>	<i>5/9</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

Revised 04/15/2011

RECEIVED MAY 10 2012

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement between the City of Huntsville and Huntsville Swim Association, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Facility Use Agreement between The City of Huntsville and the Huntsville Swim Association", consisting of twenty-two (22) pages and the date of May 24th, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2012.

Mayor of the City of Huntsville

Facility Use Agreement between
The City of Huntsville and the
Huntsville Swim Association

FACILITY USE AGREEMENT

This Facility Use and Rescission Agreement (this "Agreement") is made and entered into on the _____ day of _____, 2012, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and the **Huntsville Swim Association**, hereinafter referred to as "HSA."

WITNESSETH

WHEREAS, City is the owner of a certain parcel of land located in the City of Huntsville, County of Madison and State of Alabama, on which there are various buildings, structures and other improvements (including, without limitation, a public swimming and diving facility) (said parcel of land, together with all buildings, structures and other improvements now or hereafter constructed thereon, are hereinafter collectively referred to as the "Natatorium"); and

WHEREAS, HSA desires to use the Natatorium, on the terms and conditions set forth in this Agreement for the purpose of conducting regularly scheduled competitive swim team and dive team practices; and

WHEREAS, City desires to grant HSA a license to use the Natatorium on the terms and conditions set forth in this Lease;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1: CITY'S OBLIGATIONS.

- A. The City shall make its swimming facility at the Natatorium available to HSA for the sole purpose of conducting regularly scheduled competitive swim team and dive team practices during the following days and times:

Fall/Winter/Spring Schedule:

Monday-Friday:	4:45 a.m.—8:00 a.m. (23 short course swim team lanes)
Monday-Friday:	3:30 p.m.—4:30 p.m. (23 short course swim team lanes)
Monday-Thursday:	4:30 p.m.—7:30 p.m. (14 short course swim team lanes)
Friday:	4:30 p.m.—6:30 p.m. (14 short course swim team lanes)
Saturday:	4:45 a.m.—10:30a.m. (23 short course swim team lanes)

President, Huntsville City Council
Date: _____

Summer Schedule:

Monday—Friday: 4:45 a.m.—8:30 a.m. (10 long course swim team lanes)
Monday—Thursday: 3:30 p.m.—7:30 p.m. (6 short course swim team lanes)
Friday: 3:30 p.m.—6:30 p.m. (6 short course swim team lanes)
Saturday: 4:45a.m.—10:30 a.m. (10 long course swim team lanes)

The beginning and ending dates for the Fall/Winter/Spring and Summer schedules shall be mutually agreed upon by the City and HSA at least 30 days prior to the beginning of the schedule period. The HSA shall be permitted to use the Natatorium on days when it is closed for a City of Huntsville holiday only if it receives prior approval by the Swimming Activities Supervisor at the Natatorium.

- B. The City shall provide a facility key and a security system code to HSA so that it can open the facility each morning to conduct approved swim team practices during approved days and times prior to normal operating hours. HSA shall not make any copies of the facility key without the prior approval of the City. HSA may request the option of the City providing an employee to open the facility during the early morning swim team practices. At its discretion, the City may provide an employee as requested by HSA. Should this option be exercised HSA shall pay to the City the current facility overtime rate for each employee hour worked during the approved times.

SECTION 2: HSA'S OBLIGATIONS.

- A. HSA shall provide for the proper and safe supervision of all of its own participants and coaches while utilizing the Brahan Spring Park Natatorium. HSA shall assure that all its coaching staff, participants, and parents abide by all established City policies and procedures.
- B. All swim coaches shall be certified by USA Swimming, and all dive coaches shall be certified by AAU Diving. A copy of current coaching certifications shall be submitted each year to include any updates. All swim participants/members must be registered with United States Swimming, Inc. All dive participants/members must be registered with AAU Diving, Inc.
- C. HSA shall immediately notify facility management of any equipment or facility issues of which they become aware. This may include but is not limited to mechanical, safety, and/or sanitary issues.
- D. Coaches are responsible for team participants while at the facility. Coaches are required to be at the Natatorium before participants will be allowed to enter the facility. Coaches are also required to remain after practice until all team participants have left the facility.
- E. Although instruction on stroke technique is permissible, swim teams are not permitted to conduct basic learn to swim instruction. For this reason, all swim team participants/members must be able to swim a minimum of 25 yards without using fins or any floatation device prior to their signing up for HSA's swim program.

- F. HSA shall ensure that coaches, team participants and parents do not enter any of the offices at the Natatorium. Said offices are expressly excluded from this lease agreement with only the following exceptions.

Entering the business office for the purpose of accessing the switches to turn facility lights on or off when opening or closing or if it is necessary to access first-aid or emergency equipment. Office doors shall remain locked at all other times unless City of Huntsville personnel are present.

- G. HSA shall pay the City rental fees in an amount set forth in Section 19-43 of the *Code of Ordinances* of the City of Huntsville, and as said ordinance may be amended during the term of this Agreement.

SECTION 3: TERM

The initial term of this agreement shall be for one year commencing on the date of execution of this agreement. This one year term shall automatically renew itself thereafter with the same terms and conditions for two additional one year terms, for a maximum of three years total, unless either party provides written notice of its intention not to renew to the other party within thirty (30) days prior to the end of the prior one year lease term. If during the term or any renewal thereof, the City needs HSA to vacate the premises for any period of time, the City shall provide thirty (30) days written advance notice to HSA.

SECTION 4: TERMINATION OF LEASE

The parties intend and do hereby agree to terminate that certain Lease Agreement between the parties for the Natatorium entered into and adopted and approved by the City Council of the City of Huntsville on July 9, 2009, by resolution No. 09-647. That certain lease agreement had a term of one year with two additional one year terms upon the agreement of the parties.

SECTION 5: POINT OF CONTACT.

HSA shall contact the Swimming Activities Supervisor of the Brahan Spring Park Natatorium for all necessary communications between the HSA organization and the CITY. If the Swimming Activities Supervisor is unavailable, then HSA shall contact the Swimming Activities Coordinator. HSA shall provide the City with contact information for HSA's Parents Organization point of contact and provide a current list of coaches to include contact phone numbers.

SECTION 6: CLOSING OF POOL OR LOCKER ROOMS

Should any mechanical or other unforeseen problems necessitate the closing of the pool and/or locker rooms, Brahan Spring Park Natatorium management shall contact the HSA coaching staff and parents organization within a reasonable period of time to inform them of the closing and the anticipated re-opening.

SECTION 7: NO AUTHORITY TO OBLIGATE CITY.

Neither HSA nor its agents or employees shall have any authority to obligate the City to any indebtedness or other obligation without having obtained specific written approval thereof, by resolution, from the City Council of the City of Huntsville, Alabama. HSA shall be deemed in all respects to be a licensee and is not an agent, joint venturer or partner of the City. All of the services to be performed under this Agreement are to be performed by HSA, who may use the customary services of others under its direct supervision, without further expense or cost to the City. HSA shall be responsible for all salaries, wages, taxes, unemployment compensation, worker's compensation or other benefits of its employees, and does hereby indemnify and hold harmless the City from any obligation therefore.

SECTION 8: LIABILITY INSURANCE.

HSA shall obtain and maintain in effect throughout the term of this agreement, bodily injury and property damage liability insurance, written on an occurrence basis, covering the Natatorium in a minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) for the injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Such insurance shall specifically insure HSA against all liability assumed by him hereunder as well as liability imposed by law, and shall insure both HSA and the City, its officials, officers, employees, agents, contractors and departments, who shall be named as additional insureds through ISO Additional Endorsement CG 20 10 11 85 or equivalent, and coverage shall be afforded on a primary basis. HSA shall be required to have the Natatorium as an Insured Site covered by said policy. HSA may not permit any lapse in liability insurance coverage benefiting itself and/or the City of Huntsville, or decrease the amount of such coverage, at any time during the license period. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama with an A. M. Best's rating of A - V or better and shall be approved by the City Attorney of the City of Huntsville prior to HSA entering upon the Natatorium Premises upon the terms of this Agreement. City may, at any time, require HSA to provide a Certificate of Insurance or other proof of insurance.

SECTION 9: DEFACEMENT AND DAMAGE

HSA shall not injure, mar or in any way deface the Natatorium and shall not cause or permit anything to be done whereby the Natatorium shall be in any manner injured, marred or defaced. HSA is responsible and shall reimburse the City for any costs related to repair of damages caused by its usage of the Natatorium.

SECTION 10: TERMINATION.

The City shall have the right to cancel or terminate this license agreement at any time upon default by HSA by giving thirty (30) days written notice. In the event of any immediate threat to safety or health, the Agreement may be immediately terminated by the Mayor, his designated representative, or the City's Director of Recreation.

SECTION 11: INDEMNIFICATION.

HSA, to the fullest extent permitted by law, shall indemnify and hold harmless, the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including court awarded attorney's fees, arising out of or resulting from HSA's use of the Natatorium under this Agreement, but only to the extent caused by the negligent acts or omissions of HSA or by anyone participating in HSA. HSA's duties hereunder shall survive the termination or expiration of this Agreement.

SECTION 12: FAILURE TO PERFORM.

The failure of the City to insist on one or more instances of HSA to perform any term of this Agreement shall not be deemed a waiver of the City's right to future performance of such term(s) and HSA's obligation for future performance of such term shall continue in effect.

SECTION 13: RIGHT TO TERMINATE

The City reserves the right to terminate this facility use agreement at any time in the event that the pool or other areas of the facility become unsafe or unusable as determined by the Director of Recreation Services.

SECTION 14: E-VERIFY – NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, *Code of Alabama (1975) § 31-13-1 through 31-13-30* (also known as and hereinafter referred to as "the Alabama Immigration Act") is applicable to contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such by sworn affidavit signed before a notary. Such business entity or employer shall provide a copy of such affidavit to the City of Huntsville as part of its bid or proposal for the contract along with a copy of the Memorandum of Understanding as documentation establishing that the business entity or employer is enrolled in the E-Verify program. The required affidavit forms for the contractor and for subcontractors are included at the end of this notice.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are required of every subcontractor in accordance with §31-13-9(c) and shall maintain records that are available upon request by the City, state authorities or law enforcement to verify compliance with the requirements of the Alabama Immigration Act. Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2) or in the case of a subcontractor, in accordance with §31-13-9 (f) (1) & (2).

AFFIDAVITS:

**FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND
CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b)
AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER /CONTRACTOR**

(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of ALABAMA

County of MADISON

Before me, a notary public, personally appeared BOB GRAVES (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as

PRESIDENT

(state position) for

HUNTSVILLE SWIM ASSOCIATION

(state business

entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program.

(ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS

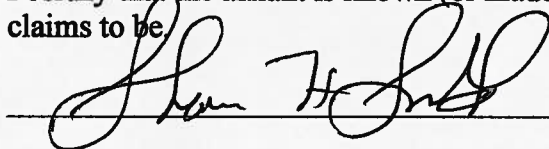
ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)



Signature of Affiant

Sworn to and subscribed before me this 1st day of May, 2012.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.



Signature and Seal of Notary Public

Author: Jean Brown

Statutory Authority: Code of Alabama, sections 31-13-9 (a) and (b); Section 31-13-9 (h).

History: New Rule: Filed December 12, 2011; effective December 12, 2011

820-4-1-.02ER Contents of Acceptable Affidavit Form For Administering Code of Alabama, Section 31-13-9 (c).

(1) This rule is intended to provide an acceptable form to be completed by subcontractors as a condition for performing work on a project paid for by contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity.

(2) The form shall appear as follows:

FORM FOR SECTION 9 (c) BEASON- HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTION 31-13-9 (c)

AFFIDAVIT FOR SUBCONTRACTOR

(To be completed as a condition for performing work on a project paid for by contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity)

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name) who, being duly sworn, says as follows:

As a condition for being a subcontractor on a project paid for by contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity, I hereby attest that in my capacity as _____ (state position) for

_____ (state subcontractor name), said subcontractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said subcontractor is enrolled in the E-Verify program prior to performing any work on the project. (ATTACH DOCUMENTATION ESTABLISHING THAT SUBCONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 2_____.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Signature and Seal of Notary Public

Author: Jean Brown

Statutory Authority: Code of Alabama, section 31-13-9 (c); Section 31-13-9 (h).

History: New Rule: Filed December 12, 2011; effective: December 12, 2011

820-4-1-.03ER Contents of Acceptable Affidavit Form for Administering Code of Alabama, Section 31-13-9 (d).

(1) This rule is intended to set forth an acceptable form for a direct subcontractor to provide to a contractor on a project paid for by contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity pursuant to Code of Alabama, section 31-13-9 (d).

(2) The form shall appear as follows:

FORM FOR SECTION 9 (d) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTION 31-13-9 (d)

AFFIDAVIT OF DIRECT SUBCONTRACTOR TO BE GIVEN TO CONTRACTOR

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name) who, being duly sworn, says as follows:

I hereby attest that as _____ (state position) for
the direct subcontractor _____ (state business
entity/employer/subcontractor name) for

_____ (state business
entity/employer/contractor name) said direct subcontractor has not knowingly employed, hired
for employment, or continued to employ an unauthorized alien. I further attest that I have
verified each of the above-named direct subcontractor's employee's eligibility for employment.
I further attest that I have in good faith complied with Code of Alabama, Section 31-13-9 (c)*

Signature of Affiant
Sworn to and subscribed before me this _____ day of _____, 2_____.

I certify that the affiant is known (or made known) to me to be the identical party he or she
claims to be.

Signature and Seal of Notary
Public

*Code of Alabama, Section 31-13-9 (c) provides: "No subcontractor on a project paid for by
contract, grant, or incentive by the state [of Alabama], any political subdivision thereof, or any
state-funded entity shall knowingly employ, hire for employment, or continue to employ an
unauthorized alien and shall attest to such by sworn affidavit signed before a notary. The
subcontractor shall also enroll in the E-Verify program prior to performing any work on the
project and shall attach to the sworn affidavit documentation establishing that the subcontractor
is enrolled in the E-Verify program."

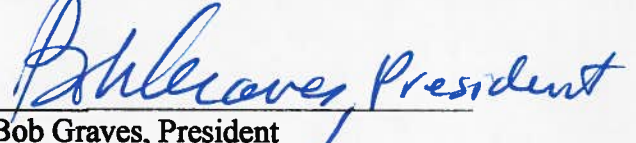
Author: Jean Brown

Statutory Authority: Code of Alabama, section 31-13-9 (d); Section 31-13-9 (h).

History: New Rule: Filed December 12, 2011; effective December 12, 2011.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

Huntsville Swim Association


Bob Graves, President

ATTEST:

By: 

City of Huntsville, Alabama
Municipal Corporation in the State
of Alabama

By: _____

Tommy Battle, Mayor

ATTEST:

By: _____

Charles E. Hagood
City Clerk-Treasurer

President, Huntsville City Council

Date: _____

Company ID Number: 516579

THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and Huntsville Swim Association (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed

Company ID Number: 516579

by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on employees by electronic means, and
- Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to make available to the Employer at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and

Company ID Number: 516579

Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo

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and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after the Form I-9 has been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. Employers may initiate verification by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer

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uses the E-Verify system for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-

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Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE

1. The Employer understands that if it is a subject to the employment verification terms in Subpart 22.18 of the FAR, it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.

b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.

c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States,

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whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and after the date and selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Employers that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with

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Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it

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determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding. The Employer must review the tentative nonconfirmation with the employee in private.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (paid for at employer expense).

7. If the Employer determines that there is a photo non-match when comparing the photocopied List B document described in Article II.C.5 with the image generated in E-Verify, the Employer must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.

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ARTICLE IV

SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

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D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.



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To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer **Huntsville Swim Association**

Julie Ashcraft

Name (Please Type or Print)

Title

Electronically Signed

03/07/2012

Signature

Date

Department of Homeland Security – Verification Division

USCIS Verification Division

Name (Please Type or Print)

Title

Electronically Signed

03/07/2012

Signature

Date

Information Required for the E-Verify Program

Information relating to your Company:

Company Name:	Huntsville Swim Association
Company Facility Address:	3322 South Memorial Parkway
	Suite 211
	Huntsville, AL 35801
Company Alternate Address:	P. O.Box 1102
	Huntsville, AL 35807-0102
County or Parish:	MADISON
Employer Identification Number:	630578935

Company ID Number: 516579

North American Industry Classification Systems Code:	711
Administrator:	
Number of Employees:	5 to 9
Number of Sites Verified for:	1
Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:	
<ul style="list-style-type: none">• ALABAMA 1 site(s)	

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	Julie Ashcraft	Fax Number:
Telephone Number:	(256) 650 - 5043	
E-mail Address:	julie.ashcraft@gmail.com	
Name:	Matt Webber	Fax Number:
Telephone Number:	(205) 482 - 2776	
E-mail Address:	cutiger276@yahoo.com	